HON'BLE SHRI G.S. SINGHVI, THE CHIEF JUSTICE
AND
HON'BLE SHRI JUSTICE C.V.NAGARJUNA REDDY

Writ Petition No.25841 of 2006

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Between:

Kishan Chand Yadav ……Petitioner.

And

Government of Andhra Pradesh,
represented by its Principal Secretary,
Higher Education Department, Hyderabad
and others. ……Respondents.

:: O R D E R ::

Counsel for the petitioner : Sri P.Panduranga Reddy,
for Sri S.Niranjan Reddy

Counsel for respondent No.1 : Government Pleader for Higher Education.

Counsel for respondent No.2 : Sri Sudesh Anand

Counsel for respondent No.3 : Sri Deepak Bhattacharjee

Counsel for respondent No.5 : Sri K.Ramakanth Reddy

18th January, 2007

Per G.S. SINGHVI, C.J.

In this petition, the petitioner has prayed for striking down Rule 4(ii) of the Andhra Pradesh Regulation of Admission into MBA / MCA Professional Courses Through Common Entrance Test Rules, 2006 (for short, 'the Rules') and also for issue of a mandamus to the Andhra Pradesh State Council for Higher Education (for short, 'the State Council') to recognise his admission to MBA course.

A perusal of the record shows that after securing the degree of B.Com. from Osmania University, Hyderabad, the petitioner appeared in the entrance test held in furtherance of the notice issued by the State Government for admission to M.B.A. course for the academic year 2006-07. He was declared successful in the test and, on that basis, was admitted in Aurora Post-Graduate College, Ramanthapur, and Hyderabad (for short, the college') in Category 'B' seats. However, when the list of candidates admitted in the college was forwarded to the State Council, the latter declined to recognise the petitioner's admission on the ground that he does not fulfil the eligibility criteria prescribed under Rule 4 (ii) of the Rules.

The petitioner has challenged the validity of Rule 4(ii) of the Rules by contending that the same is ultra vires the provisions of All India Council for Technical Education Act, 1987 (for short, 'the 1987 Act') and the regulations framed thereunder. He has averred that the eligibility criteria prescribed by All India Council for Technical Education (for short, 'AICTE') does not contain the requirement of passing SSC with Mathematics as one of the subjects and, therefore, the State Government could not have incorporated such requirement in the guise of rule making power vested in it under the Andhra Pradesh Educational Institutions (Regulation of Admissions and Prohibition of Capitation Fee) Act, 1983 (for short, 'the 1983 Act').

In the counter filed on behalf of the State Government, it has

been averred that the requirement of passing SSC with Mathematics was incorporated in the rules framed for admission in MBA / MCA courses for the year 2002 and the same criteria has been followed in all subsequent years. It has been further averred that the prescription of Mathematics at SSC level is supplemental to the qualifications prescribed by AICTE and there is no inconsistency or conflict between the qualifications prescribed by AICTE on the one hand and the State Government on the other. In the affidavit filed by Sri M.D.Christopher, Secretary of the State Council, it has been averred that the admission of the petitioner was not approved because he does not satisfy the eligibility criteria specified in Rule 4(ii) of the Rules. In paragraph 6 of his affidavit, Sri M.D.Christopher has averred that prior to 2004, two separate entrance tests were conducted for MBA and MCA courses, but from the year 2004, one entrance test is being conducted for both the courses in accordance with the rules framed from time to time. He has referred to Andhra Pradesh Integrated Common Entrance Test Rules for admission into MBA / MCA professional courses (ICET/ICET-AC) issued vide G.O.Ms.No.25, HE (EC) Department, dated 19-3-2004 and averred that the requirement of passing SSC or equivalent examination with Mathematics as one of the subjects was incorporated in Rule 3 (ii) of those Rules. According to Shri Christopher, certain amendments were made in the Rules vide G.O.Ms.No.108, HE (EC.1) Department, dated 30-7-2005, but no change was effected in the eligibility criteria for admission to MBA course. In paragraphs 10 and 11 of his affidavit, the deponent has spelt out the reasons for incorporation of the requirement of passing Mathematics at SSC level. These paragraphs read as under:

> "10. That apart, a person pursuing MBA course has to necessarily have to have the very basic knowledge of Mathematics that is taught at Matriculation or SSC level which

included Algebra, Calculus and Trigonometry to understand the subjects like Production Management, Operation Research and Statistics of Management which are core subjects included in a professional MBA course curriculum. Thus, keeping in view of this aspect of the mater, the 1st respondent, after careful examination of all these relevant factors, has included Mathematics at 10th Class level to be eligible for admission in MBA course. Hence, the said stipulation or standard prescribed by the 1st respondent in the impugned GO is not irrational and does bear nexus to the said objective that is sought to be achieved as mentioned hereinabove.

11. With respect to the averments contained in paras 15 and 16 of the affidavit, it is respectfully submitted that in a normal 10th standard of SSC level, Mathematics is a compulsory subject included in the curriculum in all regular mode courses in State of A.P. and all over India. It is only in open or distant mode schooling or a direct Matriculation, studying of Mathematics as a compulsory subject may not arise. The petitioner is one such candidate who did not possess the basic knowledge of Mathematics to be eligible to pursue an MBA course at any level i.e. 10+2+3 and, therefore, this respondent has rightly did not approved the admission of petitioner in 4th respondent college. Thus, once again it is reiterated that the prescription of the eligibility criteria under sub-rule (ii) of Rule 4 of G.O.Ms.No.59, dt.26-5-2006 is not at all contrary or at variance or adverse with the prescribed standards of eligibility criteria as fixed by AICTE and the same is in fact complementary or a standard superior to that and moreover the standard prescribed is realistic and attainable which is possessed by a majority of aspirants for admission in the course of MBA. In fact, the said standard prescribed is in accordance with a view that has been taken by the apex court in State of Tamil Nadu and another v. S.V.Bratheep Minor and another i.e. reported in (2004) 4 SCC 513 and another case State of Tamil Nadu v. Adiyaman Educational and Research Institute (1995) 4 SCC 104, wherein the Hon'ble Supreme Court has held that standards prescribed by the State

Government should not be adverse to or lower than those prescribed by AICTE, but the State Government can prescribe standards higher or additional to those prescribed by AICTE and also held further that the standards should always be realistic and attainable."

Sri P.Panduranga Reddy, learned counsel for the petitioner argued that Rule 4(ii) of the Rules is liable to be struck down because the eligibility criteria specified therein is per se contrary to the regulations framed by AICTE under Section 10 of the 1987 Act. He referred to Entry 66 of List I and Entry 25 of List III of the Seventh Schedule of the Constitution and argued that AICTE has the exclusive prerogative to lay down the conditions of eligibility for admission to professional courses like MBA and the State Government cannot make rules and prescribe conditions of eligibility different than those prescribed by AICTE. He further argued that the State cannot legislate on the field occupied by the central legislation i.e., the 1987 Act and the regulations framed thereunder and, therefore, Rule 4 (ii) of the Rules is liable to be ignored while determining the petitioner's eligibility for admission to MBA course.

Sri Sudesh Anand, learned counsel for the State Council and learned Government Pleader for Higher Education argued that there is no conflict between the provisions contained in the regulations framed by AICTE under Section 10 of the 1987 Act and the Rules framed under the 1983 Act and, therefore, Rule 4 (ii) cannot be declared ultra vires the provisions of the central legislation. Learned counsel emphasised that the requirement of passing SSC with Mathematics as one of the subjects is supplemental to the qualifications prescribed by AICTE and the State Council did not commit any illegality by declining to approve the petitioner's admission.

We have considered the respective submissions. The minimum

qualification prescribed by AICTE for entry to Postgraduate Programme in Management is any Bachelor Degree recognised by Association of Indian Universities. This is evinced from the following extracts of the document which the petitioner has placed on record at page 31 of the paper-book:

> "**ENTRY QUALIFICATION**
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> The minimum qualification for entry of Postgraduate Programme in Management is any Bachelor degree recognised by Association of Indian Universities.
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> The selection of candidates to the programme should be done on the following basis:
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> A. An All India Written Admission Test to assess applicants attitude and preparedness as given in Annexure I.
> B. Academic Records / Work Experience, and
> C. Performance in group discussion and interview.
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> **Note:**
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> 1. Scores obtained in the All India Written Test would have a minimum weightage of 50%.
> 2. University may have their own admission test for the institutions affiliated.
> 3. if admission is not done on the basis of All India Written Test, it is essential to stipulate minimum requirement of 50% aggregate marks in the qualifying bachelors degree if the screening is done at the local/State/regional level."

Rule 4 (ii) of the Rules, the validity of which has been challenged by the petitioner reads as under:

> "**Eligibility criteria for admission:**
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> …
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> (ii) The candidate should have passed the qualifying examination (10 + 2 +3) or equivalent on the date of his / her counselling with Mathematics as one of the subject in S.S.C. for admission into MBA and in (10 + 2) for MCA programmes. The candidate should also have secured a rank at the Common Entrance Test and satisfy other conditions laid down in these Rules."

No doubt, the qualifications prescribed by AICTE for admission to MBA course does not contain the requirement of passing SSC with Mathematics as one of the subjects, but incorporation of this condition in Rule 4 (ii) of the Rules does not, in any manner, impinge on the power of AICTE to lay down the conditions of eligibility. As a matter of fact, the eligibility criteria prescribed under Rule 4 (ii) is supplemental to the qualification prescribed by AICTE because it is not in dispute that the subject of Mathematics is an integral component of the MBA course and the basic knowledge of Algebra, Calculus and Trigonometry is absolutely essential for understanding the subjects of Production Management, Operation Research and Statistics of Management which are core subjects of MBA course. Therefore, by prescribing the requirement of passing SSC with Mathematics as one of the subjects as a condition of eligibility for admission to MBA course, the State cannot be said to have encroached upon the central legislation.

The question whether the State Government can prescribe qualifications in addition to or higher than those prescribed by Medical Council of India was considered by the Constitution Bench of the Supreme Court in **Dr. Preeti Srivastava v. State of M.P.**[1]. The Constitution Bench referred to Entry 66 of List I and Entry 25 of List III of the VII Schedule of the Constitution and observed:

> "Both the Union as well as the States have the power to legislate on education including medical education, subject, inter alia, to Entry 66 of List I which deals with laying down standards in institutions for higher education or research and scientific and technical institutions as also coordination of such standards. A State has, therefore, the right to control education including medical education so long as the field is not occupied by any Union legislation. Secondly, the State cannot, while

controlling education in the State, impinge on standards in institutions for higher education. Because this is exclusively within the purview of the Union Government. Therefore, while prescribing the criteria for admission to the institutions for higher education including higher medical education, the State cannot adversely affect the standards laid down by the Union of India under Entry 66 of List I. Secondly, while considering the cases on the subject it is also necessary to remember that from 1977, education, including, inter alia, medical and university education, is now in the Concurrent List so that the Union can legislate on admission criteria also. If it does so, the State will not be able to legislate in this field, except as provided in Article 254.

It would not be correct to say that the norms for admission have no connection with the standard of education, or that the rules for admission are covered only by Entry 25 of List III. Norms of admission can have a direct impact on the standards of education. Of course, there can be rules for admission which are consistent with or do not affect adversely the standards of education prescribed by the Union in exercise of powers under Entry 66 of List I. For example, a State may, for admission to the postgraduate medical courses, lay down qualifications in addition to those prescribed under Entry 66 of List I. This would be consistent with promoting higher standards for admission to the higher educational courses. But any lowering of the norms laid down can and does have an adverse effect on the standards of education in the institutes of higher education."

In the context of the provisions contained in the 1987 Act and the regulations framed under Section 10 thereof, a three Judges Bench of the Supreme Court considered the same question in **State of Tamil Nadu v. S.V. Bratheep**[2] and answered in affirmative. In that case, the respondent had challenged the prescription of qualifications and minimum eligibility marks by the State Government by contending that the same were in conflict with the regulations of AICTE. A learned Single Judge dismissed the writ petition by observing that the eligibility

criteria prescribed by the State Government was not violative of the regulations framed by AICTE. On appeal, the Division Bench struck down the norms prescribed by the State Government by observing that the same were in conflict with those fixed by AICTE. Their Lordships of the Supreme Court referred to the earlier judgments in **State of T.N. v. Adhiyaman Educational & Research Institute**[3] and **Preeti Srivastava (Dr.) v. State of M.P.**[4] and held:

> "Entry 25 of List III and Entry 66 of List I have to be read together and it cannot be read in such a manner as to form an exclusivity in the matter of admission but if certain prescription of standards have been made pursuant to Entry 66 of List I, then those standards will prevail over the standards fixed by the State in exercise of powers under Entry 25 of List III insofar as they adversely affect the standards laid down by the Union of India or any other authority functioning under it. Therefore, what is to be seen in the present case is whether the prescription of the standards made by the State Government is in any way adverse to, or lower than, the standards fixed by AICTE. It is no doubt true that AICTE prescribed two modes of admission one is merely dependent on the qualifying examination and the other, dependent upon the marks obtained at the common entrance test. The appellant in the present case prescribed the qualification of having secured certain percentage of marks in the related subjects which is higher than the minimum in the qualifying examination in order to be eligible for admission. If higher minimum is prescribed by the State Government than what had been prescribed by AICTE, can it be said that it is in any manner adverse to the standards fixed by AICTE or reduces the standard fixed by it? In our opinion, it does not. On the other hand, if we proceed on the basis that the norms fixed by AICTE would allow admission only on the basis of the marks obtained in the qualifying examination, the additional test made applicable is the common entrance test by the State Government. If we proceed to take the standard fixed by AICTE to be the common entrance test then the prescription made by

the State Government of having obtained certain marks higher than the minimum in the qualifying examination in order to be eligible to participate in the common entrance test is in addition to the common entrance test. In either event, the streams proposed by AICTE are not belittled in any manner. The manner in which the High Court has proceeded is that what has been prescribed by AICTE is inexorable and that that minimum alone should be taken into consideration and no other standard could be fixed even the higher as stated by this Court in **Dr Preeti Srivastava case**. It is no doubt true, as noticed by this Court in **Adhiyaman case** that there may be situations when a large number of seats may fall vacant on account of the higher standards fixed. The standards fixed should always be realistic which are attainable and are within the reach of the candidates. It cannot be said that the prescriptions by the State Government in addition to those of AICTE in the present case are such which are not attainable or which are not within the reach of the candidates who seek admission for engineering colleges. It is not a very high percentage of marks that has been prescribed as minimum of 60% downwards, but definitely higher than the mere pass marks. Excellence in higher education is always insisted upon by a series of decisions of this Court including **Dr Preeti Srivastava case**. If higher minimum marks have been prescribed, it would certainly add to the excellence in the matter of admission of the students in higher education."

By applying the ratio of the above noted judgments of the Supreme Court to the facts of this case, we hold that Rule 4 (ii) of the Rules is not ultra vires the legislative power of the State and the State Council rightly declined to recognize the admission of the petitioner on the ground that he does not fulfill the eligibility criteria prescribed in that rule.

In the result, the writ petition is dismissed. WPMP No.33164 of 2006 filed by the petitioner for interim relief is also dismissed. However, the parties are left to bear their own costs.

G.S.SINGHVI, C.J.

18th January, 2007

C.V.NAGARJUNA REDDY, J.

ARS/svs

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[1] (1999) 7 SCC 120

[2] (2004) 4 SCC 513

[3] (1995) 4 SCC 104

[4] (1999) 7 SCC 120